



# SATURDAY INTERNATIONAL TAX GYAN!!!

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**SITG No. 254**

**Anushka Sanjay Shah**

**v.**

**Income Tax Officer**

**Capital Gain on Sale/Redemption of  
Mutual Fund Units would be taxable only  
in Singapore as per India-Singapore  
DTAA**

**19.04.2025**



**IT(IT)A No.174/MUM/2025**

**Jain Shrimal & Co.**

## Facts of the Case

- ❖ Assessee is a non-resident Indian and filed a return for the AY 2022-23 showing short term capital gain on debt funds and equity funds amounting Rs.1,35,66,638.
- ❖ In respect of the above capital gain, exemption was claimed under DTAA claiming that capital gain on transfer of mutual fund units cannot be charged as she is a resident of Singapore and the provisions of Article 13(5) of India Singapore DTAA would apply.
- ❖ However, AO did not accept the contentions of the assessee and proposed to tax the entire amount. The assessee filed objections before DRP but the actions of the AO were endorsed by DRP. Accordingly, the AO taxed the capital gain of 1.35 crore.

## Assessee's Contention

- ❖ Assessee contended that the short term capital gain arising from the sale/redemption of mutual fund units would fall within the ambit of Para 5 of Article 13 of DTAA between India and Singapore.
- ❖ Further, assessee placed reliance on the decisions of two similar cases on India-UAE DTAA:
  - a. DCIT v/s K.E. Faizal (2019) 178 ITD 383 (Coch) (Trib.)
  - b. Sanket Kanoi v/s DCIT (2024) 168 taxman.com 418 (Delhi) (Trib)
- ❖ In both these cases, on similar facts, assessees were held to be covered by Article 13(5) India-UAE DTAA, which is identical to Article 13(5) of the India-Singapore DTAA.
- ❖ Hence the assessee argued that the issue stands covered by the decisions of the different coordinate benches and accordingly same will not be taxable in India.

## Revenue's Contention

- ❖ The revenue, on the other hand, argued that the capital gains from mutual funds arose in India and were thus taxable under the Indian taxation system as per Income tax act.
- ❖ It contended that **mutual fund units are akin to shares**, bringing them under Article 13(4) of the India-Singapore DTAA.
- ❖ The AO argued that Article 13(5) does not apply since the gains stemmed from Indian sourced assets.
- ❖ The Dispute Resolution Panel (DRP) endorsed the view of the AO and concluded that the capital gain on transfer of mutual fund units arose in India and thus were taxable in India, despite the assessee's non-resident status.

# Legal provisions

## **Article 13 of India-Singapore DTAA:**

- 1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in the other Contracting State may be taxed in that other State.*
- 2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.*
- 3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.*

# Legal provisions

## Article 13 of India-Singapore DTAA:

*4A. Gains from the **alienation of shares** acquired before 1 April 2017 in a company which is a resident of a Contracting State shall be taxable only in the Contracting State in which the alienator is a resident.*

*4B. Gains from the alienation of shares acquired on or after 1 April 2017 in a company which is a resident of a Contracting State may be taxed in that State.*

*4C. However, the gains referred to in paragraph 4B of this Article which arise during the period beginning on 1 April 2017 and ending on 31 March 2019 may be taxed in the State of which the company whose shares are being alienated is a resident at a tax rate that shall not exceed 50% of the tax rate applicable on such gains in that State.*

*5. **Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4A and 4B of this Article shall be taxable only in the Contracting State of which the alienator is a resident.***

# Ruling

- ❖ Hon'ble Tribunal relied upon the precedent of the case of DCIT v/s K. E. Faizal where it was held that under the Securities and Exchange Board of India (Mutual Funds) Regulations, 1995, mutual funds, in India can be established only in the form of 'trusts', and not 'companies'. Therefore, the units issued by Indian **mutual funds will not qualify as 'shares'** for the purpose of the Companies Act, 2013.
- ❖ Referring to the definition of “securities” under the Securities Contract (Regulation) Act, 1956, it was concluded that 'shares' and 'units of a mutual fund' are two **separate** types of securities.
- ❖ The bench considered that the gain arising from the transfer of units of mutual fund should not get covered under Article 13(4) and should be covered under Article 13(5) of the tax treaty.
- ❖ Hon'ble Tribunal concluded with the view that the assessee is entitled to deduction in respect of short-term capital gains of Rs.1,35,66368/- under the DTAA between India and Singapore is allowable.

# Our Comments

- ❖ The bench relied on the precedent of the case DCIT(IT) v. K.E. Faizal. (2019) 178 ITD 383 (Cochin)(Trib.) which covered India-UAE DTAA where article 13(5), similar to article 13(5) of India-Singapore DTAA exists. The same judgement was also given in the case of Sanket Kanoi v/s DCIT (2024) 168 taxman.com 418 (Delhi) (Trib).
- ❖ The DTAAs with the following countries also have the same provisions according to which capital gain on transfer of mutual fund units shall be taxable only in the country in which the assessee is a resident:

Country Name	Article
Mauritius	13(4)
Netherlands	13(5)
Spain	14(6)
Belgium	13(6)
Denmark	14(6)
France	14(6)
Germany	13(5)
Ireland	13(6)
Italy	14(6)
Nepal	13(6)
Portugal	13(5)
Japan	13(5)
South Korea	13(6)



<b>Section/Article</b>	Article 13 of India-Singapore DTAA
<b>DTAA/Country</b>	India & Singapore
<b>Court</b>	Mumbai – Tribunal
<b>Date of decision</b>	26.03.2025

**Note:** Case law name in **Red**- in favor of the revenue, **Green**-In favor of the Assessee, **Orange** = Partial



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